

**NEW JERSEY NOISE CONTROL COUNCIL MEETING
SEPTEMBER 14, 2010,
MINUTES**

NCC ATTENDEES: J. Lepis (Chairman, Civil Engineer), A. Schmidt (Vice Chairman, Public Member-Registered Environmental Health Specialist), J. Feder (Secretary, Public Member-pending confirmation), R. Hauser (DOL, Member), C. Accettola (Public Member-pending confirmation), I. Udasin (Public Member-Medical Doctor), Mike Klewin (NJMVC), John Surmay (Public Member – Local Governing Body), Eric Zwerling (RTNAC), D. Triggs (NJDEP).

I. ADMINISTRATIVE

Minutes of the May 11, 2010, and June 8, 2010 meetings were approved. (June 8th minutes had been previously informally approved via email to enable timely web posting of the results of the N.J.A.C. 7:29 “Stakeholders” Meeting.) Mr. Triggs distributed an updated membership list of with contact information.

II. PROPOSED DISCONTINUANCE OF NOISE CONTROL COUNCIL (NCC)

Chairman Lepis informed that he had been contacted via telephone by DEP Assistant Commissioner Wolf Skacel, advising of a decision to terminate the NCC, with noise code preparation to be handled by a recently formed Science Advisory Board plus subcommittees. A copy of Page 52 of the Governor’s report was distributed, which contained the recommendation, with the reason for termination listed as “noise control ordinances are under the authority of the municipalities and counties.” This statement is incorrect and showed a misunderstanding of the role of the NCC.

There ensued a discussion of implications of the dissolution of the NCC. Since the NCC is staffed by unpaid volunteers, there was strong sentiment that the proposed abolishment would increase costs to the state, counties, and municipalities, reduce the quality of service to New Jersey residents, and potentially harm business and growth within New Jersey. Abolishment would not be in the public interest.

1. While the Governor’s report states that noise control ordinances are under the authority of the municipalities and counties, this “authority” is limited to enforcement. The statewide noise control regulations under N.J.A.C. 7:29, are amended every five years by the DEP in consultation with the NCC. Only enforcement of the noise regulations is delegated to the counties and municipalities. The NCC is legislatively designated to maintain currency of N.J.A.C. 7:29 as well as to answer public questions regarding noise.

Municipalities may institute more stringent regulations than N.J.A.C. 7:29, subject to NJDEP approval. A Model Ordinance is offered by the NCC to facilitate uniformity of regulation, and prevent businesses from needing to operate within a non-uniform “patchwork” of potentially poorly crafted regulations by individual municipalities, which could create undue hardship for businesses that operate across, or in, multiple jurisdictions. The presence of the state ordinance preempts local ones. The presence of a spectrum of skills and interests within the NCC, assures reasonableness of regulation that balances protection of the public with the need to conduct business.

2. The NCC saves state costs by addressing the public's noise questions, which would otherwise have to be handled by the DEP. NCC volunteers investigate noise issues, perform noise studies, and develop recommendations, often providing technical methods for resolving problems without the need for enforcement action. The abolishment of the NCC's role would force counties and municipalities to individually maintain detailed expertise and individually incur ordinance development costs, duplicating effort and achieving inconsistent results.
3. The Science Advisory Board is unlikely to replicate the breadth of expertise and experience available within the NCC. Noise technology and regulation is highly involved and specialized. The NCC includes: a) Noise consultants with expertise in the science of sound and its effect on humans; b) Enforcement officers with familiar with practical issues encountered in noise ordinance enforcement; c) County Health Officers familiar with the spectrum of real complaint issues, as well as necessary compromises to prevent undue impact to business; d) Experts with ongoing experience with legal and practical issues in formulating regulations and pursuing cases in court; e) Medical experts on health impacts of noise. NCC volunteers donate extensive time and specialized acoustic equipment to investigate issues.
4. The presence of a standing body devoted to noise maintains currency with respect to emerging noise issues in other states and countries. It also facilitates exchange between geographically distributed personnel dealing with noise enforcement and centralized Noise Enforcement Officer course training.
5. State abandonment of noise control entirely would forego the current preemption of local control resulting in a "wild west" scenario of inconsistent regulations inhospitable to business and growth of industry.¹

Assistant Commissioner Skacel has been invited to the October meeting of the NCC to facilitate further exchange on the implications of discontinuance of the NCC.

III. POSSIBLE NEED TO MODIFY N.J.A.C. 7:29 REFERENCE TO INDUSTRIAL, PUBLIC, AND COMMUNITY SERVICE SITES AS A "RECEPTOR" CATEGORY

Chairman Lepis had introduced an issue via email prior to the meeting regarding the treatment of industrial, public, and community service sites as a "noise receptor" category in the year 2000 and 2005 revisions of N.J.A.C 7: 29. He distributed related information at the meeting. Chairman Lepis felt that a transcription error in drafting the final regulation resulted in industrial, public, and community service sites being erroneously listed as a "receptor." This also resulted in the Model Ordinance being inappropriately less strict than N.J.A.C. 7:29, as the aforementioned sites are not listed as a "receptor" in the Model Ordinance. Chairman Lepis proposed minor changes to fix this. Mr. Triggs pointed out that due to extensive process difficulties in modifying N.J.A.C 7:29 at this late date, changes are not feasible and efforts should be focused on a future version. Several members also felt that requirements for industrial, public and community service sites needed further discussion and should not be dealt with hurriedly at the last minute. Mr. Zwerling indicated that as a practical interim solution, adjustments could be made within the training course for Noise Enforcement Officers. Chairman Lepis agreed to provide a written follow- up clarifying his position and presenting possible alternatives for discussion at a future meeting.

¹ Noise created in one jurisdiction can propagate and create problems in another jurisdiction. An affected jurisdiction can create regulations that effectively "shut down" the business operating the noise source. Businesses with replicated facilities often create standardized configurations and must know that these configurations will not create noise violations when deployed across the state.

IV. REGULATION OF NOISE FROM MOTOR VEHICLES MOVING ON AND OFF OF A FACILITY

N.J.A.C. 7:29 addresses stationary sources of noise and excludes vehicles in transit on public roadways. For commercial establishments, vehicle operation in close proximity to residences can create real problems. Vehicles whose operation is confined to the business property in question are part of the facility and are clearly regulated by N.J.A.C. 7:29. Trucks being warmed up, or left with engines idling before leaving a facility, fall into a “grey” area that is less clear. Mr. Dotti had pointed out in email prior to the meeting, that regulating a vehicle that crossed the curb line entering a facility from the street at night could easily result in violations of the 65/50 decibel N.J.A.C. 7:29 limit that would be impossible to for a business to avoid. Unfortunately, motor vehicles entering and leaving business facilities, especially at night, is one of the more common sources of noise complaints. Mr. Dotti has given this issue and possible resolution considerable thought, so further discussion was deferred until a future meeting at which Mr. Dotti is present.

V. NOISE CALCULATION ISSUE FROM STAKEHOLDERS MEETING

At the June 8th “Stakeholders” meeting, when discussing future changes to N.J.A.C 7:29, Mr. Zwerling had raised the issue that the aggregate of adjustments for meter error, parallax in meter reading, and numerical roundoff, resulted in directives to adjust readings downward by as much as 3.9 decibels, which was excessive, and defeated the intent of portions of the regulation. Mr. Zwerling after consideration, proposed as a solution, that adjustments be specific to the type of meter used. ANSI Type 1 meters are more accurate than Type 2 meters, and need less adjustment. Digital meters do not incur reader parallax error. Mr. Zwerling will draft proposed future DEP guidance for meter adjustments for review by the NCC.

VI. WIND ELECTRIC POWER GENERATION

There was an active email interchange during the summer and some meeting discussion on noise from wind electric power generation. This issue has continued to “heat up” both nationally and within New Jersey. Existing and proposed construction in Oregon has lead to litigation and attempts by the facility operator to purchase homeowner agreement to refrain from litigation in exchange for one-time cash payments. Within New Jersey, construction of such generators has lead to opposition in Ocean Gate, and more recently, in Union Beach. For Union Beach, both the Town and County have issued opposing resolutions. Members of the NCC have been preparing for this issue, although no course of action is yet clear. Activities to date have consisted of gathering and distributing emerging literature, sound level measurements at the Ocean Gate facility, and meeting with affected parties.

VII. NEXT MEETING

The next scheduled meeting is on October 12, 2010.

Respectfully submitted:

Jerome Feder